

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

Michael Sheppard,

Plaintiff,

V.

Jo Anne B. Barnhart,  
Commissioner of Social Security,

Defendant.

No. CV-04-501 TUC-JMR

## ORDER

This case arises from a claim by Plaintiff for Social Security benefits. The Administrative Law Judge ("ALJ") determined that Plaintiff was not disabled as defined by the Social Security Act. Plaintiff's request for review of the ALJ's opinion was denied by the Appeals Council. Thereafter, Plaintiff initiated this action. Pending before this Court are cross-motions for summary judgment. However, because Plaintiff's motion asks for the Court to remand rather than enter judgment in his favor, his motion will be construed as a motion to remand.

On February 2, 2006, after a thorough and well-documented analysis, Magistrate Judge Hector Estrada issued a Report and Recommendation ("R & R") to this Court. Neither party filed an objection to the R & R. The Magistrate Judge recommended that this Court

grant Plaintiff's motion to remand and deny Defendant's motion. In his analysis, Judge Estrada concluded that the final decision of the Commissioner is not supported by substantial evidence, namely that the ALJ was required under the Social Security Regulations to consider additional evidence regarding the onset date of Plaintiff's disability.

If there are no objections to the R & R, the Court will modify or set aside only those portions that are clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (en banc). The Court has carefully reviewed the entire record and concludes that recommendation of Magistrate Judge Estrada is not clearly erroneous or contrary to law. The Court agrees that the Commissioner's findings are not supported by substantial evidence.

Accordingly,

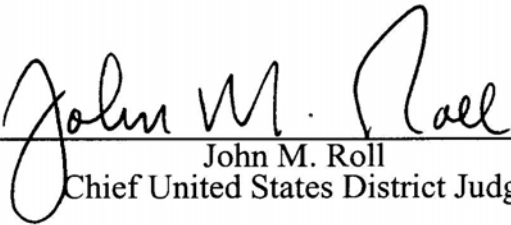
**IT IS ORDERED** that the **REPORT AND RECOMMENDATION** of the Magistrate Judge filed **February 28, 2006**, is **ADOPTED**.

**IT IS FURTHER ORDERED** that Plaintiff's motion to remand (Doc. No. 5) is **GRANTED** consistent with the Report and Recommendation.

**IT IS FURTHER ORDERED** that Defendant's cross-motion for summary judgment (Doc. No. 12) is **DENIED**.

**IT IS FURTHER ORDERED** that the instant action is **REMANDED TO THE COMMISSIONER** for further development of the record consistent with this **ORDER** and the **REPORT AND RECOMMENDATION** and for further appropriate administrative proceedings consistent with that additional development.

DATED this 17<sup>th</sup> day of July, 2006.



John M. Roll  
Chief United States District Judge